



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Additional Materials
Item # 7
January 17, 2013

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: January 16, 2013
Re: Norberg-Scarcelli Hearing

Withdrawal of Complaint

Karl Norberg has withdrawn his complaint against his step-daughter, Rosa Scarcelli (attached). Previously, he complained that she had used funds from a family company to make political contributions on behalf of himself and his son, Hillman Norberg, without their authorization. In an interview with the Commission staff, he was categorical that he did not support her campaign and never authorized the contribution.

This matter has been scheduled for a hearing twice. The last postponement was granted after the Commission received a letter from a litigation attorney for Ms. Scarcelli, stating that the parties were trying to settle their business dispute through mediation. Her attorney in this matter, Russell B. Pierce, states that the mediation efforts have been unsuccessful. So, the precise rationale for Mr. Norberg's withdrawal is unknown.

Ms. Scarcelli requests that the Commission terminate the investigation in the attached letter from Mr. Pierce.

Potential Guidance on Contributions in a Child's Name

The factual circumstances presented in this matter may indicate that there is a need for the Commission to provide better guidance to donors and candidates as to whether it is ever permissible for a parent to use funds to make a political contribution on behalf of an adult or minor child – when those funds used for the political contribution are not owned or controlled by the child. As we review campaign finance reports, we occasionally see multiple family members giving the maximum contribution to a candidate (\$100 in seed money; \$350 to a legislative candidate; or, in the past, \$750 to a gubernatorial candidate).

These circumstances may raise a question whether the funds really belonged to the child, and whether the child truly authorized a contribution in their name.

If you see value in providing advice to future candidates, the staff could draft proposed language for your consideration at the February meeting and circulate it to interested parties for comments. If you do adopt guidance on this issue, the staff can post it on the Commission's website and include it in the 2014 Candidate Guidebook in time for the 2014 gubernatorial elections. The staff's preliminary view is that a donation should only be given in the name of a family member if the family member consents to make the contribution and if the funds used for the contribution are owned or controlled by the family member. We believe this guidance is consistent with the statute.

Thank you for your consideration of this agenda item.

Wayne, Jonathan

From: Karl Norberg <karl@oldprairiepartners.com>
Sent: Monday, January 14, 2013 3:57 PM
To: Gardiner, Phyllis
Cc: 'Dana Strout'; pam@landmarkamerica.com; Wayne, Jonathan
Subject: Ethics Hearing

Dear Ms. Gardiner:

I am writing to advise you that I wish to withdraw the previously filed Complaint that I made against Rosa Scarcelli alleging that she improperly used the account of Gleichman & Company to make campaign contributions and that I authorized those payments. It is my hope that the Maine Commission on Governmental Ethics and Election Practices will honor this request and terminate the inquiries and hearing currently scheduled for the 17th of January.

I also wanted to advise you that it will be impossible for either myself or my wife, Pamela Gleichman, to be present at the hearing. We are currently scheduled to appear in U.S. Bankruptcy Court in Chicago this week which makes renders our travelling to Maine for a hearing impossible.

Thank you for any consideration that can be given to my request.

Karl Norberg

Karl Swan Norberg

Wayne, Jonathan

From: Russell B. Pierce <rpierce@nhdlaw.com>
Sent: Tuesday, January 15, 2013 4:02 PM
To: Wayne, Jonathan; Gardiner, Phyllis
Subject: Karl Norberg's Request to Terminate Proceedings
Attachments: Letter to McKee 1-15-13.PDF

Dear Jonathan:

Could you please see that this correspondence is forwarded to Chairman McKee at your earliest convenience? As I indicate at the end of the letter, as a courtesy, I also wanted you to note that given Mr. Norberg's withdrawal of the complaint – which we welcome, though it was unexpected by us – we respectfully request that the Commission vote on whether to proceed further. I will be present on the 17th to address these issues, but Rosa and our witnesses do not plan to attend, as I believe there is no longer a complaint under subsection 2 of 21-A M.R.S. sec. 1003(2) for us to respond to.

I am available to discuss this in more detail as necessary. All the best,

-Russ Pierce

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Thank you.



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January 15, 2013

Walter F. McKee, Chair and Presiding Officer
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

RE: Karl S. Norberg Complaint against Campaign of Rosa W. Scarcelli

Dear Chairman McKee:

I am writing in connection with the above matter on behalf of Rosa W. Scarcelli and the Rosa for Maine campaign, to request formally that the Commission now terminate investigation under subsection 2 of 21-A M.R.S. §1003(2).

Given the circumstances that had been present in July of 2012 when the Commission voted to proceed with this investigation pursuant to subsection (2) and Commission rules, we respectfully propose that the Commission should now be obligated to terminate the investigation. The complainant, Karl Norberg (whose complaint triggered the investigation under subsection (2)) has retracted his complaint, withdrawn it, and also requested termination of this investigation. The other critical witness – the candidate's mother, Pamela Gleichman – has also indicated her unwillingness to appear voluntarily to testify under oath. Neither of them therefore wish to appear under oath to support any of the statements they have made to the Commission's investigators. They previously sought continuances of the August 2012 hearing, which had been set after pre-hearing conference, at significant expense to all involved (the Commission, witnesses, and respondent alike).

The Commission voted on July 25, 2012 to proceed with this investigation by an evidentiary hearing, applying the standard under 21-A M.R.S. §1003(2), which provides that: "A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred." 21-A M.R.S. §1003(2).

When this Commission voted to hold the present hearing, and appoint a presiding officer for it, it was upon a finding that the Norberg complaint "if believed" set forth sufficient grounds for further investigation. The Norberg complaint has now been retracted and withdrawn, along

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with a request by him that the proceedings be terminated. Applying the standard under 21-A M.R.S. §1003(2), the person requesting the investigation has withdrawn the request; there is therefore no longer sufficient grounds for believing that a violation may have occurred, or that a further investigation will uncover sufficient grounds.

This is especially true in light of the detailed and complete written response from the Rosa for Maine campaign, submitted on May 22, 2012; and the supplemental response submitted on June 4, 2012, which included specific responses to written questions from the Commission staff. Mr. Norberg was given an opportunity to respond to those written submissions, and he did not do so. Mr. Norberg was given an opportunity to appear at the hearing when the Commission deliberations would take place on the findings necessary to move forward under 21-A M.R.S. §1003(2), and neither he nor Ms. Gleichman nor any representative of theirs chose to be present at that hearing.

Further compounding these issues, we now understand from the memorandum from staff to the Commission posted in connection with the present Agenda item for the January 17, 2013 meeting, that despite Karl Norberg's and Pamela Gleichman's absence the hearing is expected to focus upon issues involving Hillman Norberg. Hillman Norberg never made a complaint. Hillman Norberg has never submitted a statement to the Commission. To our knowledge, the Commission has no statements at all from Hillman Norberg, other than those few "text messages" between Hillman and Rosa, discussing Hillman's desire to consider personal contributions to the campaign.

Moreover, when we held the pre-hearing conference in this matter, the focus of this case was on Mr. Norberg's (and, by extension, Ms. Gleichman's) complaint. I had proffered as a potential witness Charlie Hely – who had reviewed and supported our written statements to the Commission including the supplemental response of June 4, 2012. Mr. Hely was the campaign's Compliance Director. He was the representative of the campaign who had the conversation with the Commission staff member, roughly contemporaneous to consideration of the so-called family "house party" expense reporting. Mr. Hely's understanding of that conversation was that the family-sponsored campaign event qualified each family member (Pam, Karl, Luigi, and Hillman) who sponsored the event for the \$100 expense exception under 21-A M.R.S. § 1012(2)(B). Hillman helped with the campaign, and has not made any complaint. The fact that the campaign Compliance Director, Charlie Hely, had a conversation with the Commission about the issue to ensure that the expense reporting would be appropriate under that section demonstrates good faith on the part of the Rosa for Maine campaign and Rosa Scarcelli on compliance. We do not believe that the Commission has decided to investigate this issue specifically, in light of the withdrawal of Mr. Norberg's complaint naming his majority-aged son who himself had never complained to the Commission about anything.

As the Commission is aware, in the campaign's view this complaint originated out of misplaced motives of Mr. Norberg, and Commission staff at the outset had recommended this investigation with express "reluctance" given what it acknowledged to be a "very difficult family situation." See page 13 Memorandum to Commission members from Jonathan Wayne (July 17,

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2012). Indeed this initial memorandum underscores our request here, that the original vote of the Commission on this investigation was tied to subsection (2) of 21-A M.R.S. §1003(2), and driven by Norberg's complaint. On page 12, it is only 21-A M.R.S. §1003(2) cited as the applicable standard, and on page 13 the staff suggests "an investigation that would primarily consist of the Commissioners receiving testimony from Karl Norberg, Rosa Scarcelli, and Pamela Gleichman."

This investigation now involves events that are over three years old, and that would never have been part of a discretionary investigation on the part of the Commission, either now or three years ago, given the campaign's written submission to the Commission and responses to follow-up questions from Commission staff, all demonstrating good faith compliance. The Commission voted to continue the hearing on the basis of the expectation that there would be sworn testimony from the complainants. The complainants have since retracted and withdrawn the complaint. If there is something more that needs to be presented in response to the Commission's inquiries, that the campaign can provide, we will make every effort to provide that information. At this juncture the state of the Commission's investigation should require termination of the investigation, because the person who requested the investigation under subsection 2 of 21-A M.R.S. §1003(2) has now withdrawn and retracted his complaint.

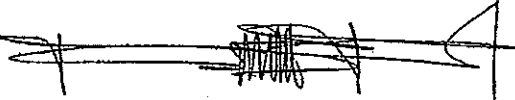
We understand that Mr. Norberg's withdrawal, retraction, and request for termination of the investigation came just prior to the January 17, 2013 hearing. We also understand that Mr. Norberg's attorney has already specifically communicated to Assistant Attorney General Phyllis Gardiner that Mr. Norberg's recent actions withdrawing and requesting termination of the investigation that he triggered, are not connected in any way to any family mediation, settlement discussions, or any other discussions originating from Rosa Scarcelli or family members on her behalf. We underscore that Mr. Norberg's decision this week, while welcome by us, was also unexpected by us and not connected to any mediation efforts (which have all been unsuccessful).

But Mr. Norberg's withdrawal and retraction does change dramatically the basis for this investigation under subsection 2 of 21-A M.R.S. §1003(2). If the Commission had known back in July of 2012 when it voted to proceed with this investigation that Mr. Norberg would not stand behind his statements, when asked to testify, and that he would request termination of the investigation, we believe it is likely that the Commission would have voted to end the investigation then and there. We believe that we have come to that juncture at this point, and we request that the Commission vote to do so now.

I will appear before the Commission on January 17th to address these issues on behalf of my client. Unless we hear otherwise from the Commission in light of this correspondence and Mr. Norberg's withdrawal of his complaint, Rosa Scarcelli and Richard Day will respectfully not plan to be in attendance on January 17, 2013.

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Very truly yours,



Russell B. Pierce, Jr.

RBP/